

Decision 06-02-009 February 16, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
(U 39 M) and the City of Orinda for
Authorization Under Public Utilities Code
Section 851 to Quitclaim a Portion of a 115 kV
Transmission Line Easement.

Application 05-06-002
(Petition for Modification
Filed October 20, 2005)

**OPINION DENYING THE PETITION OF WILMOT McCUTCHEN
FOR MODIFICATION OF DECISION 05-07-017**

Wilmot McCutchen petitions for modification of Decision 05-07-017 (Decision) in this proceeding. The Decision granted Pacific Gas and Electric Company (PG&E) the authority under Public Utilities Code Section 851¹ to quitclaim a portion of PG&E's Sobrante-Moraga 115 kilovolt (kV) transmission line tower easement, located in the City of Orinda (City), to allow the City to construct new administrative offices and to develop corresponding site improvements. The Decision found that the partial quitclaim served the public interest in two important ways. First, it provides beneficial public use of a site in the City's downtown area that would otherwise remain vacant and underutilized. Second, it allows the City to use a parcel originally designated for office space to be developed as affordable senior housing. (Finding of Fact 2.)

Petitioner asserts that "Finding of Fact 1 is inaccurate in that the voltage of the Sobrante-Moraga transmission line is not 115 kV, as stated, but 220 kV." He

¹ Unless otherwise noted, all statutory references are to the Public Utilities Code.

says that the finding that the voltage of the Sobrante-Moraga transmission line was 115 kV is contradicted by the map, which is Exhibit B to the application, and which shows the voltage to be 220 kV. He contends that PG&E's verified statement of the voltage in the application is false, and thereby prevented close scrutiny of the evidence by evading the requirements of General Order (GO) 131-D for transmission line easements.

Petitioner is wrong. PG&E constructed the Sobrante-Moraga transmission line to 115 kV. Finding of Fact 1 is correct. GO 131-D, cited by petitioner, is inapplicable. GO 131-D applies to the construction of certain facilities, including transmission facilities. It does not apply to a partial quitclaim of an easement for a transmission line already in existence.

Petitioner asserts that "Finding of Fact 4 is inaccurate in that (1) PG&E continues to use the 220 kV transmission line and its tower as before, notwithstanding its averment in its Application and in the quitclaim deed that the easement is no longer necessary or useful to PG&E in the performance of its duties to the public, and (2) if the quitclaim deed means what it says, PG&E will have to cease transmission, affecting Petitioner as well as others in Orinda."

Petitioner's assertions are without merit. First, the transmission line is 115 kV, not 220 kV. Second, the easement transferred was partial. There will be no significant impact on the operation of the Sobrante-Moraga transmission line as a result of the partial easement quitclaim. The Sobrante-Moraga 115 kV transmission line currently has two circuits, one on each side of the towers. The conductor sway will be totally contained within the remaining easement area. The conductor sway will not be a factor relative to the proposed new building since it will be situated with a setback greater than 50 feet from the center line of the tower.

Petitioner asserts that “Finding of Fact 5 is inaccurate in that (1) the project’s lead agency for CEQA review is not the City of Orinda, but the Commission, and (2) independent CEQA review by the Commission is required by General Order 131-D.”

Petitioner’s assertions are totally without merit. D.05-07-017 described why California Environmental Quality Act (CEQA) review was not necessary and that the City was the lead agency for environmental review. (See *mimeo.*, p. 3-4.) We need not repeat that discussion. Suffice it to say Findings of Fact 5 and 6,² and Conclusions of Law 2 and 3³ are accurate.

Both PG&E and the City responded to the petition and request denial. We agree and will deny the petition. PG&E succinctly summed up the matter: “The Petition is based primarily on the false premise that the Sobrante-Moraga transmission line is 220 kV, as opposed to 115 kV. Petitioner bases this mischaracterization on Exhibit B of Application 05-06-002, a historic transmission planning map showing that PG&E at one time intended to construct a 220 kV transmission line in the easement area. The text of the application, however, correctly and repeatedly characterizes the voltage as 115 kV. The map was included in the application to illustrate the easement and proposed quitclaim

² 5. The Project has been found categorically exempt by the project’s lead agency, the City of Orinda; therefore, we need not initiate an independent CEQA review of the Project.

6. The Project is an environmentally benign in-fill project which is consistent with local general plan and zoning requirements.

³ 2. The Project is categorically exempt from the provisions of CEQA.

3. The proposed quitclaim does not require further CEQA review by the Commission.

area.” No other matters require discussion. We are not persuaded to modify D.05-07-017. (Rule 47(h).)

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were not filed, but on February 7, 2006, Petitioner filed a “First Supplemental Petition To Modify D.05-07-017.” The supplemental petition consists of a grant deed which does not affect the findings of D.05-07-017, nor our denial of this petition.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Sobrante-Moraga transmission line is a 115 kV line.
2. The lead agency for CEQA review for this Project is the City of Orinda.

Conclusion of Law

This Petition is without merit and should be denied.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification is denied.
2. Application 05-06-002 is closed.

This order is effective today.

Dated February 16, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President

GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners